

Before the
Administrative Hearing Commission
State of Missouri

DIRECTOR OF DEPARTMENT
OF PUBLIC SAFETY,

Petitioner,

vs.

DAVID E. REYBURN,

Respondent.

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No. 14-0038 PO

DECISION

David E. Reyburn is subject to discipline because he committed two criminal offenses.

Procedure

On January 10, 2014, the Director of the Department of Public Safety (“the Director”) filed a complaint seeking to discipline Reyburn. On January 22, 2014, we served Reyburn with a copy of the complaint and our notice of complaint/notice of hearing by certified mail. On March 24, 2014, the parties filed a “joint stipulation to cause.” We may decide this case on the stipulated facts.¹

Reyburn admitted facts and that those facts authorize discipline. But statutes and case law instruct us that we must “separately and independently” determine whether such facts constitute cause for discipline.² Therefore, we independently assess whether the facts admitted allow discipline under the law cited.

¹ 1 CSR 15-3.440(3). All references to “CSR” are to the Missouri Code of State Regulations as current with amendments included in the Missouri Register through the most recent update.

² *Kennedy v. Missouri Real Estate Comm’n*, 762 S.W.2d 454, 456-57 (Mo. App., E.D. 1988).

Findings of Fact

1. Reyburn is licensed as a peace officer by the Director. This license is current and active and was so at all relevant times.
2. On or about March 11, 2012 through March 19, 2012, Reyburn knowingly possessed and/or unlawfully operated a Kansas City, Missouri Police Department's ("KCPD") automobile without the consent of the KCPD.
3. On or about May 19, 2012 through May 23, 2012, Reyburn knowingly possessed and/or unlawfully operated the KCPD's automobile without the consent of the KCPD.
4. On or about March 11, 2012 through March 19, 2012, Reyburn appropriated the KCPD's automobile with the purpose to deprive the KCPD thereof without the KCPD's consent or by means of deceit or coercion.
5. On or about May 19, 2012 through May 23, 2012, Reyburn appropriated the KDPC's automobile with the purpose to deprive KCPD thereof without the KCPD's consent or by means of deceit or coercion.

Conclusions of Law

We have jurisdiction over this case.³ The Director has the burden of proving by a preponderance of the credible evidence that Reyburn has committed an act for which the law allows discipline.⁴ The Director's complaint alleges, and the parties agree, there is cause for discipline under § 590.080:

1. The director shall have cause to discipline any peace officer licensee who:
 - (2) Has committed any criminal offense, whether or not a criminal charge has been filed[.]

³ Section 621.045. Statutory references, unless otherwise noted, are to the 2013 Supplement to the Revised Statutes of Missouri.

⁴ *Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo. App., E.D. 1989).

The Director argues that Reyburn committed the criminal offense of tampering in the first degree in violation of § 569.080:

1. A person commits the crime of tampering in the first degree if:

(2) He or she knowingly receives, possesses, sells, alters, defaces, destroys or unlawfully operates an automobile . . . without the consent of the owner thereof.

Reyburn unlawfully possessed and operated the KCPD's automobile without permission. He committed this criminal offense.

The Director also argues that Reyburn committed the criminal offense of stealing in violation of § 570.030:

1. A person commits the crime of stealing if he or she appropriates property or services of another with the purpose to deprive him or her thereof, either without his or her consent or by means of deceit or coercion.

Without the KCPD's permission or by deceit or coercion, Reyburn appropriated the KCPD's automobile with the purpose of depriving the KCPD of it. Reyburn committed this criminal offense.

Reyburn is subject to discipline under § 569.080.1(2). Reyburn did not waive his hearing or proceeding before the Director. With this decision, the parties may proceed to that hearing.

Summary

Reyburn is subject to discipline under § 569.080.1(2). We cancel the hearing.

SO ORDERED on June 18, 2014.

\s\ Mary E. Nelson
MARY E. NELSON
Commissioner